

REMARKS

I. Status of the Claims

Claims 1-17 and 24-59 are pending. Claims 1, 24-26, 53, 57, and 59 have been amended to specify that the C₁₀-C₁₄ fatty alcohols are nonpolyoxyalkylenated. Support for these amendments can be found in original claim 18, and in the specification as-filed at page 10. Claims 1, 53, 57, and 59 have also been amended to include at least one synthetic polymer in the compositions of the present invention. Support for these amendments can be found in original claim 45, and in the specification as-filed at pages 42-43. Without prejudice or disclaimer, claims 18-23 have been canceled. Accordingly, no new matter has been added by these amendments, nor do these amendments raise new issues or necessitate the undertaking of any additional search of the art by the Examiner.

II. Rejection under Nonstatutory Double Patenting

The Examiner maintains the rejection of claim 1 under the judicially created doctrine of obviousness-type double patenting as "being unpatentable over claim 89 of U.S. Patent No. 6,602,303 B2 . . . for the reasons set forth in the previous office action." Final Office Action at 2. Applicants respectfully disagree with the Examiner, and respectfully request that the Examiner hold the rejection in abeyance until allowable subject matter is indicated. At that time, and taking into consideration the record established for this case, Applicants will substantively address this rejection or consider filing a terminal disclaimer.

III. Rejection under 35 U.S.C. § 102(b)

The Examiner maintains the rejection of claims 1-15, 18-22, 24, 27-42, and 45-59 under 35 U.S.C. § 102(b) as allegedly “being anticipated by Laurent et al. (US 2002/0046431 A1)” (hereinafter “*Laurent*”) for “the reasons set forth in the previous office action dated 11,09,2004.” Final Office Action at 2.

Applicants respectfully traverse this rejection as *Laurent* does not anticipate the presently amended claims.

“A claim is anticipated only if **each and every element as set forth in the claim** is found . . . in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) (emphasis added). Further, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). See also M.P.E.P. § 2131.

The claims as presently-amended recite a “nonpolyoxyalkylenated C₁₀-C₁₄ fatty alcohol,” and further require “at least one synthetic thickener.” See, e.g., claim 1 as-amended. In contrast, *Laurent* discloses a “laundry list” of “oxyalkylenated and glycerolated fatty alcohols” that spans almost three columns. See, e.g., *Laurent* at paragraphs [0221] to [0251]. Accordingly, as *Laurent* does not teach nonpolyoxyalkylenated fatty alcohols, *Laurent* cannot anticipate the instant claims. Moreover, *Laurent* does not teach the claimed composition with at least one synthetic thickener. A compound or composition of matter can only be anticipated if the

disclosure of a single reference places the compound or composition in possession of the public. See *In re Brown*, 329 F.2d 1006, 1011 (C.C.P.A. 1964).

For at least the foregoing reasons, Applicants respectfully assert that this rejection is in error and should be withdrawn.

IV. Rejection under 35 U.S.C. § 103(a)

The Examiner maintains the rejection of claims 16-17, 25-26, and 43-44 under 35 U.S.C. § 103(a) “as being unpatentable over Laurent et al. (US 2002/0046431 A1) . . . for the reasons set forth in the previous office action.” Final Office Action at 2. Although the Examiner admits that *Laurent* “does not teach or disclose the percentage amounts of cationic amphiphilic polymers of poly(vinyl lactams), fatty alcohols and surfactants as claimed,” the Examiner concludes that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition by optimizing the amounts.” Office Action dated November 9, 2004, at 5. Further, with respect to claim 23, despite the fact that *Laurent* “does not teach oxyethylenated 3 EO capryl alcohols as claimed,” the Examiner asserts that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition comprising C10-C14 alcohol of oxyethylenated 3 EO capryl alcohol.” *Id.*

Applicants continue to respectfully disagree with the Examiner’s assertions concerning the teachings of the prior art, especially in light of the presently amended claims. The Examiner has failed to establish, as required by M.P.E.P. § 2143, a prima

facie showing of obviousness, at least because the Examiner has not established that all of the elements of the presently rejected claims are taught or suggested by *Laurent*.

As discussed above, *Laurent* does not teach or disclose every element of the present disclosure of the independent claims. Thus, *Laurent* cannot teach or disclose every element of the dependent claims. Therefore, not only are the Examiner's assertions regarding the teachings of the cited prior art without basis, but also irrelevant.

Accordingly, Applicants respectfully assert that this rejection is in error and should be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are not anticipated or obvious in view of the prior art reference cited against this application. Applicants therefore request the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

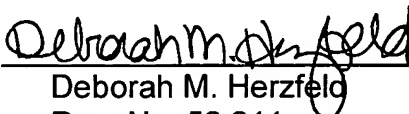
If the Examiner believes a telephone conference could be useful in resolving any of the outstanding issues, he is respectfully urged to contact Applicant's undersigned counsel at 202-408-4368.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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By: 
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